IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

WP(C).No. 1768 of 2007(I)

PETITIONER:

SALIM BABU P.K.,
SUB DIVISIONAL ENGINEER (OPERATIONS),
O/O. THE GENERAL MANAGER TELECOM DISTRICT,
ALAPPUZHA, BHARAT SANCHAR NIGAM LIMITED,
RESIDING AT KANJIRATHIL, CHERAVALLY,KAYAMKULAM.

BY ADV. SRI.A.SAMEER
SRI.R.JAYACHANDRAN

RESPONDENTS:
----

1. **THE CHIEF GENERAL MANAGER,**
   BHARAT SANCHAR NIGAM LTD., THIRUVANANTHAPURAM.

2. **SRI. HARIDASAN M.,**
   GENERAL MANAGER, BHARAT SANCHAR NIGAM LIMITED,
   TELECOM DISTRICT, ALAPPUZHA.

3. **THE ASSISTANT GENERAL MANAGER**
   (OPERATIONS), BHARAT SANCHAR NIGAM LIMITED,
   ALAPPUZHA.

4. **UNION OF INDIA,**
   REPRESENTED BY THE SECRETARY TO DEPARTMENT OF
   TELECOMMUNICATIONS, NEW DELHI.

BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL, SC,BSNL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.1768/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE APPEAL PRESENTED BY THE PETITIONER.

EXT.P2:- COPY OF THE CERTIFICATE ISSUED BY THE SCHOOL WHERE THE PETITIONER'S CHILDREN STUDIES.

EXT.P3:- COPY OF THE TAX BENEFIT GRANTED TO THE PETITIONER.

EXT.P4:- COPY OF THE ORDER DT. 4.1.07 PASSED BY THE BSNL.

EXT.P5:- COPY OF THE ORDER NO.LC-1/STA/WP(C) 1768/2007 /9 DT. 8.3.07.

RESPONDENTS EXHIBITS

EXT.R3(a):- COPY OF THE REMARKS INTIMATED OT THE PETITIONER FOR THE PERFORMANCE DURING 1993-94.

EXT.R3(b):- COPY OF THE COMMUNICATION OF ADVERSE ENTRY MADE BY THE REPORTING OFFICER.

EXT.R3(c):- COPY OF THE LETTER DT. 21.7.05 ISSUED BY THE DEPUTY GENERAL MANAGER, BSNL, ALAPPUZHA.

EXT.R3(d):- COPY OF THE ORDER NO.E3/GOS/GEN/51 DT. 8.9.06.

EXT.R3(e):- COPY OF THE LETTER DT. 12.9.06, SUBMITTED BY THE PETITIONER.

/TRUE COPY/

P.S. TO JUDGE

tss

K.BALAKRISHNAN NAIR, J.

W.P.(C) No.1768 of 2007 I

Dated this the 6th day of July, 2007.

JUDGMENT

The petitioner is a Sub Divisional Engineer working under the first respondent. He has been transferred from Kayamkulam to Alappuzha on 16.6.2004. He joined duty on 16.7.2004. The petitioner moved for exemption from shifting his residence from Kayamkulam to Alappuzha by submitting an application dated 11.9.2006. The said application was rejected by the competent authority by Ext.P4 communication dated 4.1.2007. This writ petition is filed challenging Ext.P4.

2. During the pendency of the writ petition, an appeal was preferred before the competent authority. That was rejected by Ext.P6 order dated 8.3.2007. The writ petition is amended by incorporating the challenge against Ext.P6 dated 8.3.2007.

3. The petitioner submits, in the case of similarly situated persons, sanction has been given to reside outside the headquarters. He

alone has been discriminated in the matter of granting sanction. It is also pointed out that without any reason, he has been disturbed by transferring him to Alappuzha. The action of the respondents violates the provisions of Articles 14, 16, 19 and 21 of the Constitution of India. So, he prays to quash Exts. P4 and P6.

4. The respondents have filed a counter affidavit, in which it is submitted that, as per the rules, the petitioner is bound to stay at the headquarters. When it was found that even after two years he is continuing to reside in Kayamkulam, steps were taken against him. Then the petitioner moved for permission to stay at Kayamkulam. That was rejected by Ext.P4. The appeal filed against it was also rejected by Ext.P6, on valid grounds. The reasons urged by the petitioner in his application do not afford good ground for granting his request. The petitioner has pointed out the case of two others and pleaded discrimination. Their cases have been considered and allowed on evaluating

the individual merits of their claims. So, the respondents pray for dismissal of the writ petition.

5. Heard learned counsel on both sides.

6. As per the Rules, the petitioner is normally bound to reside at Alappuzha. Of course, it is within the discretion of the competent authority to grant sanction to reside outside the said area.

7. The point to be decided in this writ petition is whether the petitioner's application had been rejected validly. Though Ext.P4 order is a non-speaking order, Ext.P6 has given the reasons for not allowing the case of the petitioner and also permitting others to reside outside the headquarters. I feel, the findings entered in this regard by the competent authority are findings of fact, which cannot be disturbed under Article 226 of the Constitution of India. The competent authority has found that the claim of the petitioner with reference to the education of the children and the income tax benefits are untenable. However, it is also

found that the petitioner has been continuing at Kayamkulam for more than 2 academic years. On the above ground, the petitioner's application has been rejected. I think, this decision of the competent authority cannot be described as perverse or irrational warranting interference by this court.

Accordingly, the writ petition deserves to be dismissed and it is dismissed.

Sd/-

(K.BALAKRISHNAN NAIR)

JUDGE

sk/

//true copy//